the somewhat unsteady and conflicting decisions on the statute of frauds and the statute of limitations. I am, therefore, unwilling to take the initiative in making this case an exception to the power of a married woman to make contracts, as her power is defined in the construction given to the act in the cases not yet reported, and to which reference has been made.

The defendant in this case was notified by the executor not to pay the mortgage, and he paid it in his own wrong. He might have filed a bill of interpleader against the parties, or after suit brought, he might have paid the money into court, and obtained an order on them to interplead. If he paid the assignees without requiring an indemnity, it was his own folly. Without notice of any kind, a prudent man, looking merely to the terms and conditions of the assignment, would hardly have paid the assignees and taken their acknowledgment of satisfaction, without making some inquiry of the mortgagee or her representative.

Let judgment be entered for the plaintiff on the verdict for the amount found by the jury, on payment of the verdict fee.

Court of Common Pleas, Lancaster County, Pa., Oct. 1855.

APPLICATION OF CITIZENS OF MANHEIM TOWNSHIP, FOR A MANDAMUS TO THE SCHOOL DIRECTORS OF SAID TOWNSHIP.

1. A mandamus cannot issue to compel the school directors to erect a school house they having been vested by the Act of Assembly with discretionary power.
2. The general principle stated in *Com.* vs. *The Judges*, 3 Binn. 273, stated and reaffirmed.

Thomas H. Burrowes, and *A. H. Hood*, for the petitioners.

A. Herr Smith, for the school directors.

HAYES, J.—The petitioners, twelve of the inhabitants of Manheim township, pray this court to grant them a rule on Samuel

Royer, Isaac L. Landis, John Hoover, David Harnish, Christian B. Landis, and David Landis, directors of the common schools of Manheim township district, in the said county of Lancaster, to show cause if any, why a writ of mandamus should not issue, commanding them forthwith to erect and establish a common school at some point central and convenient to the children of the petitioners, so that they may receive that instruction and benefit which the common school laws of the State manifestly intend for all the youth thereof.

The said school directors have filed their answer to this petition, in which they allege that they have kept in view, and will continue to regard the best interests of children and parents within their district; that there are eleven school houses in Manheim township, and one across the line in Warwick township, to which children from Manheim township, by an arrangement with the directors, are sent; and after stating other facts, in order to show the inexpediency of erecting another school house at this time, and in the place desired by the petitioners, they proceed to say, that with an anxious desire to promote the interests of education in the district, they carefully examined the petition of the applicants for a *mandamus*, inquiring into the wants and wishes of all the parties interested, and at a full meeting of the board, after a full and thorough investigation of the facts, on the 12th of May, 1855, resolved that it was unnecessary and injudicious at present to build the school house asked for by the petitioners, and on the 23d of July, 1855, after further reflection and investigation, the said board, at a full meeting, resolved that the interest of the township and school district did not require the erection of said school house.

A considerable amount of testimony has been exhibited in support of the petition, and of the allegations of the answer; but as the question on which this application must be decided, depends upon the fact of the directors proceeding in the discharge of their duty, it does not appear necessary for the court to enter upon the consideration of the point, whether there is sufficient number of school houses in the district, or whether a new school house ought to be erected in the place which the petitioners have preferred.

By the 23d section of the act entitled "An Act for the regulation and continuance of a system of education by common schools," passed the 8th day of May, 1854, the board of directors of every district shall possess and exercise the following powers, and perform the following duties, together with other powers and duties given and enjoined by this act:

1. They shall establish a sufficient number of common schools for the education of every individual above the age of five, and under twenty-one years, in their respective districts, who may apply for admission and instruction, either in person, or by parent, guardian, or next friend.

2. They shall cause suitable lots of ground to be procured and suitable buildings to be erected, purchased or rented, for school houses, and shall supply the same with the proper conveniences and fuel, and shall have power, with the directors of adjoining districts, to establish joint schools, and the expenses shall be paid as may be agreed upon by the directors or controllers of said districts.

And if it shall be found that on account of great distance from, or difficulty of access to the proper school house in any district, some of the pupils thereof could be more conveniently accommodated in the schools of an adjoining district, it shall be the duty of the directors of such adjoining district to make an arrangement by which such pupils may be instructed in the most convenient school of the adjoining district, and the expense of such instruction shall be paid as may be agreed upon by the directors or controllers of such adjoining districts, &c., &c.

The boards of directors elected and organized under this Act of Assembly, are unquestionably deliberative bodies.

They are to determine what is a *sufficient number* of common schools for their respective districts; they are to determine what are suitable lots of ground, and what are suitable buildings to be erected upon them for school houses; or whether it is better to purchase or rent buildings for the purpose—all their duties are subjects of deliberation—all their resolutions and acts are to be the result of deliberation. Their numbers imply that they are to act

upon deliberation. Their organization into a board, with president and secretary, is for deliberation.

In regard to the matter of the petition before the court, did the respondents, as directors of Manheim township, proceed to deliberate and act upon the proposition? It appears that they did so; that the question was brought before the board on two different occasions, was fully considered by the directors, and decided by them, and that they determined that it was inexpedient to erect a school house applied for by the petitioners; in other words, that it was unnecessary and injudicious.

What is the remedy in case of neglect or refusal to perform their duties? Is there any specific remedy provided?

By the eighth section, if a school director refuse to attend a regular meeting of the board after written notice to appear and enter upon the duties of his office, or shall neglect to attend any two regular meetings of the board in succession, without excuse, or refuse to act in his official capacity when in attendance, the directors may declare his seat vacant; and by the ninth section, if all the members of any board of directors, shall refuse or neglect to perform their duties, by levying the tax required by law, and to put and keep the schools in operation, so far as the means of the district will admit, or shall neglect or refuse to perform any other duty enjoined by law, the Court of Quarter Sessions of the proper county may, upon complaint in writing by any six taxable citizens of the district, and on due proof thereof, declare their seats vacant, and appoint others in their stead until the next annual election for directors.

The question for the court is, are the petitioners entitled to the writ of mandamus against these respondents, on account of their determination in regard to the erection of the school house for which the petitioners applied?

Although a mandamus is of common right, yet it will be granted only in extraordinary cases, where there would otherwise be a failure of justice. The applicant must establish a legal right as well as the want of a specific legal remedy, 1 Harris, 75, 2 Binn. 36, 2 Pa. Rep. 518. It is to be invoked only in cases of the last necessity, not where there is another effectual remedy, 1 Jones, 196. Where

an act of the Legislature provides that the County Commissioners shall draw an order for the amount of the schoolmaster's bill for educating poor children, *if they approve thereof*, the court cannot compel them by mandamus to draw an order, if they disapprove.—Nor will a mandamus lie to compel the County Commissioners to give the assessment books to one of two parties claiming to have been duly elected assessor, they having previously, *in the exercise of their discretion*, given the books to the opposing candidate. *Gaul* vs. *The Com. of Phila.* 2 Pars. 220.

The principles (said C. J. Tilghman) which govern the court in issuing writs of mandamus, are well understood. Where a ministerial act is to be done, and there is no other specific remedy, a mandamus will be granted to do the act which is required. But where the complaint is against a person who acts in a judicial or deliberative capacity, he may be ordered by mandamus to proceed to do his duty, by deciding and acting according to the best of his judgment; but the court will not direct him in what manner to decide. This was the principle adopted by the Supreme Court of the United States, in the case of the *United States* vs. *Lawrence*, 3 Dall, 42; and it has frequently been recognized by the court, particularly in the case of the *Commonwealth* vs. *The Judges of the Court of Common Pleas of Philadelphia County*, 3 Binn. 273.

Now, in the first place, if the directors had neglected or refused to perform their duty in regard to the furnishing a sufficient number of school houses in their district, the remedy is specifically provided; and therefore a mandamus is not demandable. The Act of Assembly prescribing the duty, has itself designated the remedy. But, even if this were omitted, is the case one, in which a mandamus lies? Suppose the directors had utterly refused, upon demand of the petitioners, to take the matter into consideration, whether another school house were necessary or proper, perhaps a mandamus might have been demandable requiring them to proceed and determine that point; but as they did take it into consideration, and have, on deliberation, decided, whether wisely or not well—as the court, on mandamus, could not have directed them how to decide, so, a *fortiori*

the court cannot issue a *mandamus* to compel them to reform their decision.

The rule to show cause is discharged, at the cost of the petitioners.

Chittenden County (Vt.) Supreme Court, Dec. 1854.

VILAS & PLATT VS. OSCAR A. BURTON, *et als.*

1. In Vermont a decree of the Court of Chancery for contempt in disobeying an injunction, is not removable into the Supreme Court by appeal, it not being a "final decree in the cause."
2. Proceedings for contempt in one court, where the court has jurisdiction, are not revisable in any other court.

This case being argued, was held under advisement until the September Circuit term, when the opinion of the court was delivered by

REDFIELD Ch. J.—The only question made in the present case upon this motion to dismiss the appeal, is whether a final decree of the court of chancery, in proceedings taken against parties to the suit, and others confederated with them, for contempt, in disobeying an injunction of that court, is removable into this court by appeal.

I. It is certainly competent for the legislature to allow an appeal in cases like the present, and in the State of New York, they have done so in terms. Decisions in that State, therefore, showing that decrees of the Court of Chancery are subject to appeal and revision in their court of appeals, can signify nothing here, inasmuch as the right of appeal there extends to all decrees of the Court of Chancery, interlocutory as well as final, and decrees in cases of contempt are expressly named in the statute. So, too, in the English practice, 3 Daniels Ch. Pr. 1633, 1634, it is allowable for the party to appeal from interlocutory as well as final decrees, but in this State, the rule in regard to appeal from the decree of the Court of Chancery, is different. The statute in terms, limits it